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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 99M-74
90782

DISPATCHED BY

In re Application of)	MM DOCKET NO. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

ORDER

Issued: November 8, 1999

;

Released: November 10, 1999

This is a ruling on Motion to Compel filed by Reading Broadcasting, Inc. ("Reading") on October 29, 1999. A Response to Motion to Compel was filed by Adams Communications Corporation on November 4, 1999.

Reading's First Motion For Document Production was filed on August 23, 1999. Adams filed Response and Objections on September 3, 1999. Certain of the documents requested by Reading were provided. What remained under contention are FCC Form 301 application regarding Station WGLY(FM), Goulds, Florida; and "representative documents" relating to enhancement credits sought for local residence, civic participation, and past broadcast experience.¹ Reading also reports that Adams has not submitted its list of documents claimed privileged. See Memorandum Opinion and Order FCC 99M-51, released September 14, 1999.

Documents Claimed Privileged

Reading asserts that there have been numerous requests for a list of documents that Reading claims to be privileged but there has been no production of such a list. Adams denies that there have been numerous requests but does not deny that the list was requested or that a complete list was not earlier provided. MO&O FCC 99M-51, supra required:

¹ The request was keyed to Discovery Rule §1.325(c)(1)(x).

Counsel [for both parties] shall agree to a date and time for exchanging those documents [relating to the respective opposing parties]. There shall also be exchanged lists of responsive privileged documents with appropriate description and reason for privilege.

Thus, there should have been no need for "numerous" or even any request by Reading once there was agreement of counsel to the exchange date. Nor should there have been any need for Reading's Motion to Compel the production of the list. But it seems that Reading had no choice. Adams apparently gave Reading's counsel a general description of privileged materials and it was then up to Reading to ask for "additional details concerning the materials so described." That type of informal procedure was not authorized under the above ruling which instructed on specifically what was to be done.² Adams represents that it is now furnishing Reading with a more detailed list of responsive documents that are claimed to be privileged, a copy of which list is attached to Adams' Response.

Station WGLY(FM)

On August 23, 1999, Reading limited its request for Adams' applications for broadcast facilities from 1980 to the present. In a deposition of an Adams' principal, it was disclosed to Reading that an application was filed in the late 1960s for Station WGLY(FM) and that operations of the station began in the early 1970s. Thus, application Form 301 for Station WGLY(FM) was outside the time frame set by Reading. In its Motion to Compel, Reading asks for immediate compliance "to the extent" that Station WGLY(FM) "is covered by Reading's First Request." But the application for Station WGLY(FM) occurred about ten years before the 1980 cut-off set by Reading. Adams objects to production because the application falls outside the scope of Reading's request and there is no apparent relevance to the request. There is no basis to order production of application Form 301 for Station WGLY(FM).

Enhancement Evidence

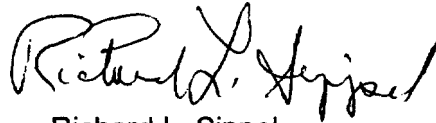
Reading accurately repeats that evidence of local residence, civic participation and past broadcast experience are within the scope of comparative factors that the parties may prove and discover. At first, Adams resisted this request as unauthorized under Bechtel II. But such evidence is discoverable in this case under a pertinent ruling. See Memorandum Opinion and Order FCC 99M-47, released August 9, 1999. Now Adams advises in its Response that none of its principals claim to be residents of the Reading service area. Copies of resumes of Adams' principals Messrs. Haag, Fickinger, Steinfeld, Umans, and Gilbert were provided with Adams' Response. Adams represents that there are no known documents of Adams relating to past broadcast experience. Adams now appears to have complied with Reading's request for evidence of enhancement factors. This information may be received in evidence as a Stipulation if the parties would agree to so stipulate.

² Counsel are encouraged to informally agree to methods of discovery that suit their needs and preferences. But where privileged documents may be in issue which can lead to further procedures, and there has been specific instruction provided, counsel should be sure that the assigned task is completed or at least keep the Presiding Judge informed of agreed modifications.

Order

IT IS ORDERED that the Motion to Compel filed by Reading Broadcasting, Inc. on October 29, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION³

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is fluid and cursive, with the first name "Richard" being more prominent.

Richard L. Sippel
Administrative Law Judge

³ Copies of this Order were e-mailed to all counsel on date of issuance.